Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Competitive Telecommunications Association,	)	CC Docket No. 98-39
Florida Competitive Carriers Association, and	)	
Southeastern Competitive Carriers Association	)	
Petition on Defining Certain Incumbent LEC	)	
Affiliates as Successors, Assigns, or	)	
Comparable Carriers Under Section 251(h) of	)	
the Communications Act	)	

AMERITECH CORPORATION REPLY

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I. INTRODUCTION AND SUMMARY

Ameritech Corporation (Ameritech) respectfully replies to comments submitted in the above-captioned proceeding on the petition of CompTel *et al.* for declaratory ruling or, in the alternative, for rulemaking. In its initial Comments, Ameritech demonstrated that CompTel's petition is procedurally and substantively flawed. It showed, first, that CompTel's petition is, in reality, an untimely petition for reconsideration of the *Non-Accounting Safeguards Order*.[1] It showed, further, that CompTel's case is built on pretense, not facts, in that it ignores the distinction between an incumbent local exchange carrier (ILEC) and the corporate parent of an ILEC - a distinction that is codified in the Communications Act. Ameritech also demonstrated that the ruling sought by CompTel is completely at odds with governing law. Finally, it showed that

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[1] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order,* 11 FCC Rcd. 21905 (1996)

CompTel's requested ruling would be fundamentally anticompetitive and contrary to the public interest.

A number of other parties corroborate these observations. The Comments of BellSouth and SBC, in particular, lay bare the factual errors and flawed legal reasoning underlying CompTel's request. But it is not just ILECs that do so. Even AT&T implicitly acknowledges that the ruling sought by CompTel would be unlawful. Thus, although it supports the flawed factual premise of CompTel's request, it conspicuously does not support the ruling sought by CompTel.[2] Sprint, as well, recognizes that CompTel's petition is overbroad in scope.

Not surprisingly, however, a number of so-called competitive local exchange carriers (CLECs) throw their pro-competitive principles to the wind and jump on the CompTel bandwagon. Sensing an opportunity to insulate themselves from legitimate competition, they serve up an absurd parade of horribles – ranging from section 272 violations to discrimination to price squeezes to predatory pricing - which they claim could result from the presence of an ILEC affiliate in in-region local markets. Some even claim that CompTel's proposal does not go far enough, and they ask the Commission to flatly prohibit

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[2] Instead, it urges the Commission to initiate a rulemaking to address the nondiscrimination, separation, transactional, and other requirements with which an ILEC must comply before any affiliate could be found not to be a successor or assign or comparable carrier. AT&T Comments at 3.

an ILEC affiliate from providing in-region local service under any circumstance.[3]

These comments are meritless. For starters, not a single CLEC even pretends to offer a cogent and considered legal analysis, either from a procedural or a substantive standpoint. To the extent they discuss the law at all, they ignore or misrepresent the *Non-Accounting Safeguards Order* and parrot CompTel's misplaced reliance on three Fair Labor Standards Act cases which do not stand for the proposition for which CompTel cites them in its petition.

It is not just credible legal analysis, however, that is missing from these comments: also missing is a credible predicate for regulatory intervention. Notwithstanding the plethora of potential abuses cited by the CLECs, not one of them can identify a single instance in which an ILEC actually evaded its section 251 obligations by providing in-region local service through an affiliate. Indeed, the parade of horribles they describe is not even plausible from a purely theoretical standpoint.

To be sure, the CLECs attempt to mask the emptiness of their position in this docket by dressing up their arguments with the usual hyped rhetoric. These strong words, however, cannot compensate for the substantive deficiencies of their claims. CompTel's petition is woefully flawed, both procedurally and substantively, and it must be rejected.

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[3] *See* ALTS Comments at 6 (asking Commission to establish rebuttable presumption that ILEC affiliates providing in-region local services are ILECs, regardless of what name they use or whether they receive assets from the ILEC). *See also* NEXTLINK Comments at 6 and e.spire

In the Reply Comments that follow, Ameritech shows that CompTel's petition is: (1) in reality, a late-filed petition for reconsideration of the *Non-Accounting Safeguards Order*; (2) inconsistent with the governing statutory requirements, in particular, sections 251(h)(1) and (h)(2) of the 1996 Act; and (3) contrary to sound public policy. Because the law is controlling here, Ameritech begins with an analysis of the procedural and statutory basis for CompTel's request before turning to the policy issues.

II. ARGUMENT

A. The Relief Requested By CompTel Would Be Unlawful, Both Procedurally and Substantively.

1. CompTel's Petition is, in Reality, an Untimely Petition for Reconsideration of the Non-Accounting Safeguards Order.

In its Comments, Ameritech showed that the declaratory ruling sought by CompTel, as well as its alternative rulemaking request, are flatly inconsistent with the *Non-Accounting Safeguards Order*. Ameritech noted that, for this reason, both of these requests are actually untimely reconsideration requests of that order.

None of the comments supporting CompTel effectively disputes this showing. The vast majority of them ignore the *Non-Accounting Safeguards Order*

Comments at 1 (asking the Commission to rule definitively that any affiliate of an ILEC providing in-region local service is, itself, an ILEC).

altogether, as if it did not exist.[4] Those that acknowledge that order simply re-invent it to their own liking. e.spire, for example, claims that "a Commission finding that BellSouth BSE is a 'successor or assign' of its ILEC sibling or parent would be consistent with . . . the Commission's *Non-Accounting Safeguards Order*."[5] e.spire does not, however, explain the basis for this assertion; rather, its analysis begins and ends with that single conclusory - and demonstrably inaccurate - statement.

AT&T and TRA, on the other hand, try a different tack. Instead of claiming that CompTel's requests are consistent with the *Non-Accounting Safeguards Order*, they claim that order was not definitive.[6] These parties claim that the Commission merely addressed one set of circumstances in which an ILEC affiliate would be considered an ILEC but did not consider other circumstances, such as those presented by CompTel.

This claim is disingenuous, at best. At the time of the *Non-Accounting Safeguards Order*, the Commission was well aware that ILEC section 272 affiliates - like ILECs themselves - would operate under the name of their corporate parents. Indeed, as Ameritech noted in its Comments, it had already filed several pleadings at the Commission under the name of its long-distance

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4 *See MCI* Comments; ALTS Comments; KMC Telecom Comments. LCI Comments; WorldCom Comments; NEXTLINK Comments; ICG Telecom Group Comments; and Sprint Comments, none of which mentions the *Non-Accounting Safeguards Order.*

5 e.spire Comments at 4. Ameritech is at a loss to understand the consequences of deeming an affiliate to be a successor or assign of its parent, which is what apparently e.spire advocates.

6 AT&T Comments at 5; TRA Comments at 4.

affiliate, Ameritech Communications, Inc. The Commission was also aware that ILEC affiliates would obtain financing from their parents; indeed, the Commission issued rules to ensure that such financing did not encumber the assets of the ILEC itself.[7] If the Commission thought that use of a corporate parent's name and resources raised questions as to the status of the affiliate, it would have so held. It did not. It held, instead, that "if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), we will deem such entity to be an "assign" of the BOC under section 3(4) of the Act with respect to those network elements."[8]

Significantly, in reaching this conclusion, the Commission explicitly rejected a broader rule it had proposed in its Notice of Proposed Rulemaking. It stated: "We decline to adopt an absolute prohibition on a BOC's ability to transfer local exchange and exchange access facilities and capabilities to an affiliate, because we conclude based on the record before us that such a restriction would be overly broad and exceed the requirements of the Act."[9] The Commission's decision to adopt a narrower rule than that proposed in the Notice underscores just how far afield is CompTel's proposal: if the transfer of *network capabilities* by an ILEC does not necessarily trigger ILEC status, the transfer of a

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7 *See Non-Accounting Safeguards Order* at paras. 189-190

8 *Id.* at para. 309.

9 *Id.* at para. 310.

non-network asset, such as goodwill or capital, by the *corporate parent* could not possibly do so.[10]

To be sure, the Commission did not specifically discuss these types of resource "transfers" in its decision. The suggestion, however, that the Commission was leaving the door open with respect to these matters is pure fantasy. The truth is that the Commission did not discuss use by an ILEC affiliate of the name and capital of its corporate parent or of personnel that formerly worked for the ILEC because any notion that these types of resource "transfers" could trigger ILEC status was so far-fetched as to not warrant discussion.

The Commission established a clear rule that sets forth in unambiguous terms the asset transfers that could trigger ILEC status. Nothing further was required, and the fact that the Commission did not see fit to identify all of the transfers to which its rule does not apply in no way suggests that the Commission's decision was not definitive with respect to such transfers.

Moreover, suggestions that the Commission addressed only some of the circumstances that would create a successor or assign defy common sense. The purpose of the analysis in this portion of the *Non-Accounting Safeguards Order* was to address concerns that Bell operating companies (BOCs) would use sham affiliates to evade their section 251 and 272 obligations. That was and is a

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[10] Nor could the *Non-Accounting Safeguards Order* be deemed to confer successor or assign status based simply on the transfer of what CompTel calls "human capital" - which could be a single employee from a pool of thousands.

serious concern, and the Commission could hardly have been satisfied with a "partial solution" that did not comprehensively address the issue on the table. Nor would the Commission have adopted rules if it believed that those rules were just the tip of the iceberg. It would have instead concluded that issues involving the status of ILEC affiliates must be addressed on a case-by-case basis, rather than through concrete rules. It, of course, said nothing of the kind.

According to AT&T, the *Local Competition Order* demonstrates that the Commission did not intend to adopt specific procedures or standards for determining whether a LEC should be treated as an ILEC.[11] AT&T is only partially right. In the *Local Competition Order*, the Commission disavowed any intent to adopt broad rules implementing section 251(h)(2). The Commission said nothing, however, about section 251(h)(1). It in no way suggested that it would not adopt rules governing the meaning of "successor or assign," and in the *Non-Accounting Safeguards Order* it did just that.

AT&T also fails to mention that in the very same paragraph of the *Local Competition Order* in which the Commission declines to adopt specific rules governing section 251(h)(2), the Commission states that in its case-by-case consideration of section 251(h)(2) claims, it would not impose ILEC obligations on non-ILECs absent a "clear and convincing showing[.]" Subsequently, in the *Non-Accounting Safeguards Order*, the Commission found "no basis in the record

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[11] AT&T Comments at 5, *quoting Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98, FCC 96-325, released August 8, 1996 *(Local Competition Order)* at para. 1248.

. . . to find that a BOC affiliate must be classified as an incumbent LEC under section 251(h)(2) merely because it is engaged in local exchange activities."[12] Since, as shown above, the Commission knew at the time that such affiliates would use the corporate brand name and corporate capital, the Commission effectively rejected the very rule CompTel now asks the Commission to adopt. For this reason, CompTel's alternative request for rulemaking under section 251(h)(2) is, like its declaratory ruling request, an untimely petition for reconsideration of the *Non-Accounting Safeguards Order*. Both requests are procedurally improper and should be dismissed.

2. CompTel's Requested Ruling Would be Inconsistent With the Telecommunications Act of 1996.

Substantively, as well, CompTel's petition is lacking. Most significantly, the rulings it seeks are at odds with the law. As explained in the comments of Ameritech, BellSouth, SBC, SNET, and others, the Act draws a clear distinction between an ILEC, on the one hand, and its affiliates, on the other. It makes clear that the two are not equivalent unless the affiliate is a successor or assign of the ILEC or meets all of the requirements of section 251(h)(2).

This statutory distinction cannot simply be swept aside through sleight of hand. That, however, is exactly what CompTel and the commenters supporting it propose to do when they argue that the mere transfer of *some* resource from an ILEC or its corporate parent to an affiliate using the corporate name warrants a conclusion or a presumption that the affiliate is a successor or assign of the ILEC,

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12 *Non-Accounting Safeguards Order* at para. 312.

or meets the requirements of section 251(h)(2). As SBC notes: "[A]n affiliate always receives something from the corporate entity that creates it. Thus, the standard CompTel proposes would simply eliminate the distinction between "affiliate" and "successor or assign."[13]

As Ameritech and others note in their comments, CompTel fails to offer any legal basis for such a *de facto* repeal of the statutory distinction between an ILEC and its affiliates. The only authority it offers are three Fair Labor Standards Act cases which do not stand for the proposition for which they are cited and do not lend support for CompTel's overbroad reading of "successor or assign."

Commenters supporting CompTel are no more successful. Many of them do not bother to offer any legal basis for their position; they simply ignore the law. Those that go through the motions of a statutory analysis simply parrot CompTel and offer fleeting reference to the three Fair Labor Standards Act cases that CompTel mis-cites.

The only exception is MCI, which offers a two-page string cite to cases that stand for the proposition that courts will disregard corporate distinctions when those distinctions are a mere sham. This string cite, however, is completely meaningless because MCI does not attempt to demonstrate that any of these cases involved fact patterns that have any relevance here.[14] Of course,

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13 SBC Comments at 6 (emphasis in original).

14 As Ameritech explained in its comments - and, indeed, as explained in the cases cited by CompTel - the determination of whether an entity should be deemed a successor or assign of

the reason MCI does not discuss the facts is that they are completely inapposite; all of these cases involve corporate shells that were created in a sham effort to establish a legal distinction between entities that were, for all intents and purposes, identical.

An ILEC affiliate offering in-region local service is nothing of the sort. To the contrary, it is fundamentally different from the ILEC, if for no other reason than it lacks the core assets that are used by the ILEC to provide local services. As discussed in Ameritech's comments, these assets - the so-called bottleneck local exchange facilities - are the defining characteristic of an ILEC. Further accentuating the distinction between an ILEC and its affiliate is the fact that, at least for the foreseeable future, ILEC affiliates lack anything close to the market share of the ILEC and have none of the attributes of market power possessed by so-called dominant carriers.

Beyond this, the notion that congressional intent would be thwarted if ILEC local affiliates are allowed to operate as CLECs in the marketplace is belied by the fact that, as the Commission recognized, this is precisely what Congress intended.[15] Moreover, as the Commission further recognized, a contrary rule would be inconsistent with the public interest and would reduce competitive

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another entity for particular purposes depends upon the nature of their relationship and the purposes for which the assessment is made.

15 *Non-Accounting Safeguards Order* at paras. 309-314.

options for consumers.[16] Thus, the rule of law applied in the cases cited by MCI has no relevance here.

Some commenters, nevertheless, maintain that an ILEC affiliate using the corporate trade name is indistinguishable from the ILEC and should be so treated.[17] Since there would be no reason for an ILEC to establish an affiliate if that affiliate were itself deemed an ILEC, these parties seek what is, for all intents and purposes, a flat-out prohibition on the use by an ILEC affiliate of corporate goodwill.

These parties ignore the fact that when Congress intended to limit an entity's use of an affiliate's name, it codified that limitation in the statute. For example, section 274(b)(6) prohibits an electronic publishing affiliate of a Bell operating company from using the name, trademarks, or service marks of the Bell operating company. No such limits were established with respect to ILEC local or long-distance service affiliates.

Indeed, parties raising this issue ask the Commission to go even further than section 274(b)(6). That provision acknowledges the difference between a BOC and its parent and specifically permits an electronic publishing affiliate of a BOC to use the name, trademarks, and service marks of the parent corporation. CompTel and its supporters, on the other hand, ask the Commission to read into

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16 *Id.* at para. 315.

17 TRA Comments at 6; ICG Telecom Group Comments at 7; NEXTLINK Comments at 7; WorldCom Comments at 7-8.

the Act a *de facto* prohibition on the ability of an ILEC local affiliate to use the name of the ILEC or its parent.

In short, neither CompTel nor any its supporters comes close to presenting a legal basis for its proposed reading of section 251(h)(1) or (h)(2). The only cases they cite are off-point, and they conveniently omit accurate discussion of any cases or statutory provisions that are on-point. To the extent they discuss the *Non-Accounting Safeguards Order*, for example, they distort it, and not one of them even mentions section 274, much less the *Guam* NPRM, in which the Commission offered specific proposals for applying section 251(h)(2). Policy considerations aside, these deficiencies are fatal to their position.

B. CompTel's Proposals Are Not in the Public Interest.

CompTel's proposals are not merely inconsistent with the statute; they are also contrary to sound public policy. For one thing, they could significantly limit the ability of any RBOC to compete effectively in the provision of bundled, discount packages of local and long-distance services. Even assuming that an ILEC and its long-distance affiliate were permitted to combine their offerings into a bundled discount package - an issue the Commission has not squarely addressed - there could be significant regulatory constraints that would not apply if such package were offered solely by the affiliate.[18] This could deny

[18] KMC maintains that, even without a local affiliate, an ILEC can jointly market local and long-distance services. KMC Comments at 4. KMC ignores the fact that an ILEC cannot offer a discount on local services to the customers of its long-distance affiliate unless that same discount is available to the customers of other long-distance carriers. It also ignores the fact that ILECs are subject to dominant carrier regulation in many state jurisdictions. Thus, in order to compete effectively in what will be undoubtedly a highly competitive market for bundled

consumers the full benefits of competition and place RBOCs at a significant competitive disadvantage in the marketplace.

CompTel's proposed rule also could have a profoundly negative impact on the deployment of new services and new technologies. As Ameritech and others explained in their section 706 petitions, a LEC's incentive to invest in new technology, particularly innovative technology that is costly and risky to deploy, is substantially diminished if the LEC must make that technology available to competitors on a Total Element Long Run Incremental Cost (TELRIC) basis. Former Common Carrier Bureau Chief and Deputy White House Counsel, Kathleen Wallman, put it this way:

> Do we really mean to say that any carrier that is thinking of building a new broadband network should count on being able to recover, from day one of operation, only the forward looking costs of their brand new network? I don't think so. No rational, efficient firm would take that deal. And that would be our collective loss, not just theirs.[19]

This drag on investment incentives has particular relevance to the deployment of broadband data networks, but the issue is broader than that; denying LECs a sufficient return from innovative new services and technologies can chill the deployment of such services and technologies regardless of whether they are data or voice-based.

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discount packages, an RBOC may have to provide local services through an affiliate that purchases local inputs on the same terms as any other CLEC.

[19] Remarks of Kathleen Wallman to the Annual Convention of the National Association of Regulatory Utility Commissioners, Boston, MA, November 11, 1997 (emphasis in original).

This, of course, is not rocket science. It is a basic tenet of free market economics. It is also why we have patents. Put simply, companies invest in research and development and deploy new products and services because of the profit incentive. If they are denied the fruits of their investment, or if they lose first mover advantages because of the need to share those fruits with others, investment and innovation will suffer.

In this respect, CompTel's petition is contrary to Congress' stated desire, in passing the 1996 Act, to spur the widespread deployment of advanced telecommunications capabilities throughout the nation. It is also at odds with section 706, which directs the Commission to take steps to ensure that this goal is achieved.

CLECs ignore these considerations.[20] They argue it is anticompetitive and contrary to the goals of section 251(c) for an ILEC affiliate to deploy any technology or service that is not made available pursuant to section 251(c) to other carriers.[21]

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[20] In fact, most of them claim that there is *no* legitimate reason for an ILEC to offer service through an affiliate. They seem to assume that it is necessarily wrong for an ILEC's parent to avoid regulatory restrictions that apply to the ILEC. The logic of this argument is specious. If there is a permissible path by which an ILEC affiliate may provide local services as a CLEC - a path that is based in law and/or policy - then the fact that the ILEC's parent chooses to avail itself of this path in order to minimize regulatory burdens is perfectly legitimate. This is, in fact, the rationale of the LCI petition, which CompTel and its CLEC supporters have endorsed, though Ameritech takes issue with the path LCI has proposed. Thus, the only relevant question is whether the path to less regulation has been followed; motives are irrelevant, and claims that there is something inherently sinister about seeking to minimize regulatory burdens are not only hypocritical, but also the ultimate red herring.

[21] e.spire wrongly accuses Ameritech of having "transferred" data facilities to its data affiliate. e.spire Comments at 6. This argument confuses a new deployment with a transfer. Ameritech has never transferred network facilities from an ILEC to any unregulated affiliate.

Their asserted right to do so, however, is an assault on sound economics and the pro-competitive principles of section 251(c). Section 251(c) was intended to facilitate new entry into the local market by enabling new entrants to avail themselves of an ILEC's existing network infrastructure - the so-called local exchange bottleneck. One of the assumptions underlying this provision is that if CLECs are given nondiscriminatory access to these core network services and facilities, they will be able to use that access as a platform from which to develop their own products and services. Nothing in the framework of the Act suggests that Congress intended to provide CLECs with a permanent right to feed parasitically on all innovations developed, not only by the ILECs, but also by their affiliates. To the contrary, Congress intended to create competition – a process by which all carriers would be continually striving for the competitive advantages that flow from innovation. Congress recognized that if an ILEC affiliate obtains the same access to the ILEC's network and services as any other CLEC, it has no advantage over any other CLEC in developing new services or in deploying new technologies. There is thus no reason why that affiliate ought to share the fruits of its innovation with any other CLEC.

ICG and MCI maintain nevertheless that, if ILECs are permitted to deploy new services in their affiliates, they will bleed their existing networks, leaving other CLECs and residential and small business subscribers with inadequate network services and unbundled network elements, while providing their own

customers with state-of-the-art services through their local affiliate.[22] This argument makes no sense. First, the principal asset of any ILEC - the asset that differentiates the ILEC from all other LECs - is its core local network. No business would ever run its core asset into the ground unless it were intent on self-destructing. Second, the ILEC's affiliate will itself depend upon the ILEC's core network as a building block for its own services, including new services or new technologies that it might deploy. An ILEC therefore cannot degrade services or facilities provided to its competitors without also degrading the quality of its affiliate's offerings.

In similar fashion, several parties claim that ILECs will be able to avoid their resale obligations by transferring services to their affiliates.[23] Ameritech addressed this argument in its comments. It noted that, to the extent the ILEC affiliate is, itself, a reseller, the argument is nonsensical. In any event, the Commission has recognized that states have the authority to police the withdrawal by ILECs of their retail offerings.[24] It cannot be assumed that states would stand by and do nothing while an ILEC withdraws those retail services upon which CLECs rely to compete in the marketplace.

To be sure, an ILEC affiliate might (or might not) end up with better services or better facilities than other CLECs if the affiliate is more successful in

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22 MCI Comments at 7; ICG Comments at 10.

23 *See, e.g.*, KMC Comments at 5; WorldCom Comments at 7-8; ICG Telecom Group Comments at 9; NEXTLINK Comments at 5.

24 *Local Competition Order* at para. 968.

using the ILEC's services and facilities to create its own offerings. So long as the affiliate was not the beneficiary of discrimination, however, that is not anticompetitive. CLEC arguments to the contrary are based on the mistaken notion that competition is a result, rather than a process.[25]

Some CLECs argue that unaffiliated an affiliated CLECs will not compete on fair terms.[26] To support their arguments, they trot out all of the familiar bogeymen that are now becoming their stock in trade: discrimination, predatory pricing, and price squeezes.[27]

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[25] To its credit, TRA is the only CLEC commenter that recognizes this. It states: "Theoretically, an ILEC affiliate that obtains network elements or wholesale services from the ILEC will do so pursuant to the same terms and conditions such elements and services are available to an unaffiliated, competitive provider of local service. Hence, theoretically, such a transaction should not raise 'legitimate concerns' regarding 'potential[] eva[sion] ...[of] the section ...251 requirements." TRA Comments at 4, *quoting Non-Accounting Safeguards Order* at para. 309. TRA supports CompTel, however, because it seeks to neutralize any benefit that an ILEC affiliate could derive from its parent's goodwill or access to capital. Although Ameritech believes that TRA's agenda is consistent with neither the statute nor sound public policy, it commends TRA for its honesty. It is the only CLEC that states its case in straightforward fashion; the others all seek to camouflage this same agenda with bogus arguments about predatory pricing and the like. *See infra.*

[26] Perhaps the most outrageous suggestion in the comments is TCG's claim that the Section 272 Compliance Plan that Ameritech submitted for Commission review in connection with the Ameritech Michigan Section 271 application demonstrates Ameritech's "propensity . . . to contravene statutory requirements" and hence the need for the rules advocated by CompTel. TCG Comments at 3. Actually, Ameritech's plan, which was approved in substantial part, reflected Ameritech's reading of section 272 and the *Non-Accounting Safeguards Order* - an order that, judging by its comments, TCG has not yet read. Those few aspects of Ameritech's Compliance Plan that the Commission did not approve were based on what Ameritech believed at the time was a reasonable construction of the *Non-Accounting Safeguards Order.* In any event, TCG's claim is the ultimate *non sequitur.* The fact that this plan was submitted to the Commission for review in conjunction with Ameritech's section 271 application demonstrates the opposite of what TCG suggests: that BOCs *cannot* avoid their section 272 requirements.

It is also ironic that TCG purports to take offense over the fact that Ameritech's long-distance affiliate, ACI, received financing from its parent, Ameritech Corporation. If, as TCG claims, "[t]hese financial advantages are precisely what contributes to a carrier's dominance in the market," then TCG should be dominant since its parent, AT&T, has far more resources at its disposal than does Ameritech Corporation.

[27] *See* MCI Comments at 3-13; LCI Comments at 4.

These claims have all been raised and rejected in various contexts before. For example, in the *Non-Accounting Safeguards Order*, in rejecting claims that BOC affiliates should be prohibited from reselling BOC local services, the Commission stated: "There is nothing inconsistent with both requiring nondiscriminatory access and at the same time allowing an affiliate to be a requesting carrier."[28] Similarly, the Commission "conclude[d] that MCI's argument – that opportunities for discrimination and cross-subsidy are greater when the BOC provides network elements to its affiliate than when it provides resold services – is speculative. To the extent that concerns over discrimination arise, there are safeguards in sections 251 and 252 to address such concerns."[29]

The Commission reiterated this holding in the next paragraph, while also addressing arguments about the alleged risk of predatory pricing. It stated: "To the extent there are concerns that the BOCs will unlawfully subsidize their affiliates or accord them preferential treatment, we reiterate that improper cost allocation and discrimination are prohibited by existing Commission rules and sections 251, 252, and 272 of the 1996 Act, and that predatory pricing is prohibited by the antitrust laws." The Commission went on to note "[i]n sum, we find no basis in the record for concluding that competition in the local market would be harmed if a section 272 affiliate offers local exchange service to the public that is similar to local exchange service offered by the BOC."

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28 *Non-Accounting Safeguards Order* at para. 313.

29 *Id.* at para. 314.

The Commission also rejected alternate versions of these arguments in the *LEC Classification Order*.[30] In that proceeding, MCI and others had argued that BOC section 272 affiliates should be classified as dominant carriers in their provision of interstate interLATA services because, *inter alia*, of the alleged risk of predatory pricing and of a price squeeze. They argued that inflated, subsidy-laden access rates made such strategies especially viable. The Commission rejected those arguments based on its conclusion that existing safeguards would more than protect against any such risks. The fact that the Commission rejected these arguments as applied to access services only underscores how baseless they are with respect to resale services and unbundled network elements. The suggestion, for example, that an ILEC affiliate could engage in predatory pricing or a price squeeze in its provision of resold service is belied by the fact that the wholesale rate that the affiliate must pay must be generally available and can be a benchmark against which the affiliates retail rates are gauged. Moreover, the very premise of MCI's price squeeze argument was that access rates were not cost-based. That premise does not apply to network elements, which, as a matter of law, must be made available at cost. Thus, these arguments have even less merit here than they did when they were rejected in the *LEC Classification Order*.

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30 *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, FCC 97-142, Second Report and Order, released April 18, 1997.

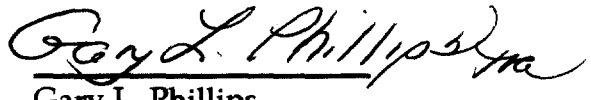
In re-raising these issues, these parties do not offer any new arguments, much less evidence that any ILEC has ever attempted to engage in the kind of abuses they describe. Their fear mongering is just a rehash of the speculation they've offered before.

In any event, these arguments do not even address CompTel's proposal, since they have nothing to do with the indicia of a successor or assign or the elements of section 251(h)(2). They are simply arguments that BOCs should not be allowed to create an in-region local affiliate under any circumstance. Here, again, these parties ignore the *Non-Accounting Safeguards Order*, which squarely held that BOC section 272 affiliates may provide local exchange services through resale or by purchasing access to unbundled network elements. If there is any doubt (which there should not be) as to whether CompTel's request is an untimely reconsideration of the *Non-Accounting Safeguards Order*, there can be no doubt that these arguments fit that bill. As such they are procedurally improper, as well as substantively meritless.

III. CONCLUSION

For the reasons discussed above and in Ameritech's Comments, CompTel's petition is procedurally improper, inconsistent with the law, and contrary to sound public policy. It must be rejected.

Respectfully Submitted,



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June 1, 1998

CERTIFICATE OF SERVICE

I, Toni R. Acton, do hereby certify that a copy of the foregoing Ameritech Corporation Reply has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 1st day of June, 1998.

By:_____
Toni R. Acton